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No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1997

Rodney Joseph Cox, et al.,

Petitioner,

v.

United States, Assistant Director
James Grant, et al.,

Respondents.

Writ of Certiorari

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Rodney Joseph Cox, et al.,
RT 2 Box 118
Stromsburg Nebraska 68666
402-764-2114

41PP

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QUESTION(S) PRESENTED

1. Whether 16th amendment removed requirement that Direct Tax be apportioned and that the apportionment be upon "among the several States?"

2. Whether 16th amendment allows United States to bypass several States authority and directly lay and collect taxes among the people of each Union State?

3. Whether phrase "among the several States" actually intends to include "among the several People?"

4. Whether phrase "among the several States" provide jurisdiction limitation upon United States, regardless of where phrase appears in Constitution?

5. Whether FRAP Rule 47 and L. R. 47(A)(a) accomplish what 1st amendment was adopted to prevent?

6. Whether Fed. R. of Civ. Pr. and Fed. R. of Ap. Pr. accomplish what 1st amendment was adopted to prevent?

7. Whether filing a timely Notice of Appeal can be construed a frivolous or meritless event?

8. Whether phrase "summarily affirmed" has published judicial meaning?

9. Whether Administrative office of the United States Courts abridges separation of powers?

10. Whether Federal Reserve note has any secured substance as 12 U.S.C. § 411, as amended, provides?

11. Whether unredeemable Federal Reserve note should be classified as "worthless security" pursuant to Congressional Commerce Clause authority @ 26 USC § 165(g)?

12. Whether Fed. note meets substance test of a U.S. Dollar?

13. Whether U.S. Obligation is monies substance?

14. Whether United States has power to Tax U.S. obligations?

15. Whether 16th Amendment allows U.S. to act intrastate?

16. Whether Labor and Servitude performed involuntarily constitute violations of 13th Amendment?

17. Whether United States has intrastate power to impose its taxing will upon Union State Citizen directly without apportion..?

18. Whether United States is accomplishing with 16th amendment what involuntary servitude clause in 13th amendment was adopted to prevent?

19. Whether Income Tax Act, Federal Reserve Act, Emergency Farm Mort. Act, Security Act & Gold Removal Act are Constitutional?

20. Whether exercising redress has become impossible for non-attorneys to accomplish, rendering violations of 1st amendment?

21. Whether individual agents acting under color of authority can be named individually in 26 U.S.C. § 7433 damage action for recklessly and intentionally disregarding provisions of the law?

22. Whether Internal Revenue Service employees are classified as Agents of the United States Government?

23. Whether Citizens of a Union States and Residents of a Union States means the same by definition?

LIST OF PARTIES

[ ]All parties appear in the caption of the case on the cover page.

[x]All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Edward and Donna Axmann
Earle C. Bailie
Dorothy Bredthauer
Leslie Cornwell
Charlie & Denise Crofutt
Ted & Mona Daggett
James A. & Joan B. Davis
Craig R. Ditzen
Lloyd Francis
William J. Fritz
James L. & Janis A. Gustafson
Andrew M. Jaskiewicz
Timothy H. and Dawn Joeckel
Edwinn L. & Maxine M. Johnson
Robert L. Jones
Dale & Erlyn Mattley
Chris L. Meints
Orlan & LaDonna Meske
Louise M. Miller
Roy & Cecilia Nuttelman
Don & Marilynnn A. Offenbacker
Kenneth E. & Norma L. Schroeder
Reynold J. Spulak
Robert E. and Barbara M. Spurgeon
Cleve W. & Arlene M. Stutzman
Jeanne M. Thorne
Kenneth E. Thorne
Steve Tolstedt
Wilfred Wagher

Eugene Bredthauer
Joseph Calihan
Deloit Craig
Maurice & Patricia Flanagan
Darold & Rosella Friesen
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Robert L. George
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Anita S. Huber
William O. Huber
Robert L. & Lois E. Johnson
Jeffrey & Melody Kohl
Bob Lemke
Mie Lemke
Jim Onkka
Donald Pandorf
Lloyd Pester
Frank & Janet Rogers
John and Lois Lukes
John McFadden
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Nancy Schmidt
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Chris & Kathy Sianis
Esther C. Thorne
Joseph & Judith Vacek
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Virgil R. & Elaine M. Ackerman
Charles & Beverly Bennett
Bobby Bernhardt
Irene Bernhardt
Michael Lee & Anne Leizabeth Bruns
Daniel & Marie Buller
Ronald Bush
Clovis D. Colley
James L. & Twila M. Conley

Rodney Joseph & Shelly Sue Cox
Larry G. & Diann J. Critel
Leslie F. Dallmann
Walt Ducker
Alan D. & Beth A Eberspacher
Marie P. Garrick
Allen R. Geiken
Ryan & Young Hansen
Gary L. Hinman
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Darin Michael Kauffman
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Kathleen M. Kinnan
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Donald J. Livingston
Scott K. & Elsa A. Loverinng
Kenneth E. & Mary L. Martensen
Audrey P. Martin
Delmar Mehring
Warren G. Meyer
John & Jenifer Morrissey
Theresa M. Morrissey
Barbara J. Nordahl
Michael P. Pandorf
Curtis Lee & Sharon Jean Richey
Ronald J. & Clinta L. Samuelson
Ronald R. Soester
Janet Stuthman
Paul H. Stuthman
Noel Delyn & Vera I. Vice
Lawrence L. Wagner
Christopher D. Yeutter
David K. Yeutter
Marilyn K. Yeutter

United States of America
The Collectors of Internal Revenue
Asistant Director James A. Grant
James A. Grant, Idividually
Chief Special Procedures Function Richard J. Wempe, Richard J. Wempe, Individualy
Chief Collection Randy K. Harper
Randy K. Harper, Individually
Agent Particia A. Price
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Agent Lyle D. Metzger
Lyle D. Metzger, individually
Agent George Langdale
George Langdale, individually
Agent Susan (Witzel) Fox
Susan (Witzel) Fox, individually
Dept. of Justice Atry Carol E. Shultze
Carol E. Shultze, individually
Agent Sally Johnson
Sa'ly Johnson, individually
Agent Susan M. Fox
Susan M. Fox, individually
Agent Thomas Moore
Thomas Moore, individually
Agent Graig Wilson
Craig Wilson individually
Agent Bill House
Bill House, individually
Agent Patty Coyle
Patty Coyle, individually
Agent Patricia J. Kellogg
Patricia J. Kellogg, individually
Agent Kay Ponte
Kay Ponte, individually
Agent Timothy Vaughn
Timothy Vaughn, individually
Agent Michael Ponte
Michael Ponte, individually
Agent J. Michael Kempter
J. Michael Kempter, individually
Agent Barabara Jones

Barbara Jones, individually
Agent Elaine Hattig
Elaine Hattig, individually
Agent Lamar Lewis
Lamar Lewis, individually
Agent Greg Hopkins
Greg Hopkins, individually
Agent Merle J. Thomas
Merle J. Thomas, individually
Agent K. D. Matson
K.D. Matson, individually
Agent J. Michael Brady
J. Michael Brady, individually
Agent Rita Simpson
Rita Simpson, individually
Agent James Brown
James Brown, individually
and any other John Does unnamed

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Petitioner respectfully prays that a Writ of Certiorari issue in review of the judgement below.

OPINIONS BELOW

[x] For case from **federal court:**

The orders of the United States District Court appear at Appendix **A** to the petition.

The orders of the United States Court of Appeals for the Eighth Circuit appear at Appendix **A** to the petition.

JURISDICTION

[x] For cases federal court:

The date on which the United States District Court issued it order; April 18 1997 and June 2, 1997.

The date on which the United States Court of Appeals for the Eighth Circuit Dismissed Petitioners' Appeal; September 9, 1997.

Timely Petition for Rehearing En Banc was denied on November 14, 1997.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1651(a).

THIS PETITION IS IN AID OF APPELLATE JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitution of the United States of America:
Under Article I;
Section Eight, Clauses One, Two, Three, Four, Five, Six, Eighteen; and

Section Nine, Clauses Three, Four and Seven; and

Section Ten, Clause One;

Statutory Provision:

The Federal Reserve Act of December 23, 1913, and all its amendments including Section 16; codified at 12 U.S.C. § 411;

The Emergency Farm Mortgage Act of May 12, 1933, and all its amendments specifically Section 1(b)(1); codified at 31 U.S.C. § 5103.

The Security Act of May 27, 1933, and all its amendments codified beginning with 15 U.S.C. § 77(a);

The 1st Amendment
The 5th Amendment
The 10th Amendment
The 13th Amendment
The 16th Amendment
12 U.S.C. § 411
26 U.S.C. § 165(g)
26 U.S.C. § 7433
28 U.S.C. § 1651(a)
28 U.S.C. § 1340
31 U.S.C. § 5103

RELIEF IS NOT AVAILABLE IN ANY OTHER COURT

Petitioners sought relief on issues and character involving income tax collection on mere receipt of Federal Reserve notes since 1995. In the United States District Court for the District of Nebraska, case # 4:CV95-3016; appealed to the 8th Circuit Court, case # 95-3532, resulting in the case herein.

Petitioners are aware of numerous Union States whom petitioned for redress and yet through one reason or another have been denied access to supporting opinions of the Courts in regard to current imposition of income taxes, levied upon receipt of U.S. obligations in the form of un-redeemable Federal Reserve notes.

Petitioners believe their is no Judge outside of the One Supreme Court who is willing to consider the Constitution involving that of money, and/or their is not a Judge outside of the Supreme Court who knows enough about the issue to understand it. Either way, petitioners can not find relief in any other Court. The issues raised by petitioners are fundamental with regard to the first issue of every case filed, save a case filed by the United States, and that issue is the issue regarding the substance and then form of "filing fees." The Union States are in forced violation to Constitution and this Court is the Court of last resort for such unwarranted and unfounded violations.

STATEMENT OF THE CASE

1. On January 9, 1995, most petitioners commenced action 4:CV95-3016 styled Timothy H. Joeckel, et al, v Collector of Internal Revenue and John Does 1 through 10,in the District of Nebraska, pursuant to 26 U.S.C. § 7433 of the Tax Payers Bill of Rights and 28 U.S.C. § 1340, alleging United States' refusal to except revocation of certain voluntary elections held by Law, arguably made voluntarily by mistake of law, on the part of petitioners therein, and that respondents have refused to allow petitioners to revoke such elections by the exercise of fraud, coercion and Fear.

2. On June 23, 1995, the District Court in Nebraska, dismissed petitioners' complaint pursuant to merits of respondents Motion to Dismiss; specifically due to another of petitioners errors in that petitioners' failed to file Treasury Claims pursuant to 26 CFR 301.7433(e)(1-5), and that because of this error, petitioners' complaint deserved unequivicable dismissal pursuant to Federal Rules of Civil Procedures 12(b)1 and 12(b)6.

3. In August of 1995, appeal was taken of the District Court's order to the 8th Circuit Court of Appeals docket number 95-3532.

4. Beginning in April of 1996, petitioners' filed Treasury Claims pursuant to 26 CFR 301.7433 as the respondents and Court had suggested, awaiting a six month exhaustion time period (26 U.S.C. § 7433(d)(1).

5. On July 5, 1996, during the six months time period, the 8th Circuit Court of Appeals entered its decision, finding the district court's judgement was affirmed citing 8th Circuit Rule 47(B).

6. On July 30, 1996, President Clinton amended Tax Payer Bill of Rights wherein petitioners were no longer held required to exhaust administrative remedies in order to justify civil damage action against United States pursuant to 26 U.S.C. § 7433, contrary to July 5, 1996, decision affirmed in 95-3532.

7. On September 20, 1996, after waiting approximately six months as determined in 95-3532, petitioners commenced new litigation pursuant to 26 U.S.C. § 7433 and 28 U.S.C. § 1340, evidencing complete and undeniable exhaustion of administrative remedy, whatsoever, styled Linda Secora, et al., v. United States, et al., Case No. 4:CV96-3356.

8. On April 18, 1996, District Court entered orders petitioners were to file an "Amended Complaint," alleging facts in support of their complaint, by April 30, 1997.

9. On April 30, petitioners reallege their complaint along with amendments thereto in compliance with District Court's order.

10. On June 2, 1997, District Court docketed a final order, affirming respondents Motion to Dismiss for failure to state a claim to which relief can be granted.

11. On July 28, 1997, District Court docketed petitioners "Notice of Appeal."

12. On August 19, 1997, petitioners began to receive respondents Notice of Appearance representing "United States of America, et al., and Motion for Summary Affirmance dates as August 15, 1997.

13. The 8th Circuit Court of Appeals set the opening brief schedule to begin on or before September 16, 1997.

14. On September 9, 1997, the 8th Circuit Court of Appeals summarily affirmed judgement of the District Court dated April 18, and June 2, 1997, collectively, pursuant to its own motion under local rule 47(A)(a).

15. On October 19, 1997, petitioners' petitioned the 8th Circuit Court of Appeals for rehearing pursuant to FRAP Rule 35 and 40 involving FRAP Rule 3 and petitioners right to "taking of appeal as of right," among others.

16. On November 14, 1997, the 8th Circuit Court of Appeals denied petitioners "Petition for Rehearing."

17. On February 11, 1998, petitioners' requested a 60 day extension in order to file petitioners' Writ of Certiorari.

18. On February 14, 1998, petitioners were GRANTED a 30 day extension, allowing petitioners' Writ of Certiorari to be post marked on or before March 14, 1998, by U.S. Mail, and considered timely filed.

19. This Writ of Certiorari follows.

REASON FOR GRANTING THE PETITION

20. The One Supreme Court should Grant petitioners' Writ of Certiorari for the reason petitioners were denied any right to appeal the District Court's decision, contrary to the existence of FRAP 3.

21. Petitioners are numerous in number and collectively demand the right to be heard and have been met with refusal by Circuit Court.

22. The United States has no **MONEY** as enumerated in the Constitution, Federal Reserve notes are not money in form or substance and thus all power claimed involving taxation is fictitious claim of United States in equity.

23. The United States Court of Appeals for the 8th Circuit has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's enumerated power.

24. If the United States Court of Appeals for the 8th Circuit Court's final decision involving petitioners is allowed to remain, it would render petitioners' unalienable rights where "Congress shall make no law respecting 'the right of the people to petition the Government for a redress of grievance'" fictitious.

25. The issues raised by petitioners in District Court involve need for clarification upon separation of powers between United States and State and between United States and People as provided by 10th amendment.

26. The Supreme Court's decision in the Gold cases of 1934, are in need of review and overturned on grounds Federal Reserve note dollars and Money Dollars are no longer equivalent in trade, leaving each Union State in violation to Article I, § 10, Cl.1. prohibitions in violation to the United States of America's Constitution, causing damage to petitioners' rights to property.

27. The income tax laws produce effect of involuntary servitude, without choice, in opposition to 13th amendment.

28. The District Court and United States Court of Appeals for the 8th Circuit are applying phrase "among the several States" in opposition to Supreme Court's mandate in U.S. v. Lopez.

29. Since at least 1862, the United States has exercised power to issue notes of credit which were intended to circulate as currency, but in fact, were not money.

30. Since at least 1913, Congress has authorized the issuance of Federal Reserve notes which purported to be redeemable in current monies substance.

31. Since at least 1933, the United States has issued or caused to be issued unredeemable Federal Reserve notes which purport to be Legal Tender when said notes do not conform to Section 16 of the Reserve Act.

Said notes are unredeemable, unauthorized and/or unwarranted pursuant to any Power involving the issuance of Securities of the United States.

32. Court Clerks power to summarily affirm District Court final judgement violates separation of powers doctrine.

SUMMARILY AFFIRMANCE ARGUMENT ON 47A(a)

33. Petitioners' Notice of Appeal was entered on the District Court docket on July 28, 1997, seeking review of the entire docket in the case herein. Petitioners were to file their opening brief on or before September 16, 1997.

34. On September 9, 1997, the 8th Circuit Court of Appeals issued a "Judgement" wherein it referred to the "Appeal from the United States District Court for the District of Nebraska" and where the Court "summarily affirmed" the judgement of the District Court. In the Court's September 9, 1997, order, the Court ordered in accordance with "Eighth Circuit Rule 47A(a).

35. Local Rule 47A(a) states:

"(a) **On Motion of Court.**

The Court on its <u>own</u> motion may summarily dispose of any appeal without notice...The Court will dismiss the appeal if it is not within the court's jurisdiction or is frivolous and entirely without merit. The court may affirm or reverse when the questions presented do not require further consideration."

36. The petitioners applied "..." within the courts rule where reference is made to "in forma pauperis" on grounds such language of the rule is not applicable to the petitioners herein.

37. The petitioners received unfair treatment by the Eighth Circuit Court of Appeals whereby the Court exercised it's discretionary functions applicable with issues contained in "promulgated" Local Rule 47A(a). Local Rule 47A(a) applies to the disposition of any appeal without notice. A fair construction involving the spirit of Local Rule 47A(a) is that:

a. the Court may "dismiss" the appeal if the appeal is not within the court's jurisdiction;
b. the Court may dismiss the appeal i f the appeal is determined by the Court to be frivolous;
c. the Court may dismiss the appeal i f the appeal is without merit;
d. the Court may affirm or reverse when the questions presented do not require further consideration.

SUPPORT FOR REHEARING

38. With regard to whether this Court has jurisdiction (number 1 above) to determine the merits of petitioners' request (right under Rule 3) for review of the District Court's Order, the Appellate Court obviously has jurisdiction based upon the **prima facie, preponderance and beyond a reasonable doubt** "evidence" of its Judgement entered September 9, 1997. If the Appellate Court decided it did not have Jurisdiction over the Notice of Appeal, then the Appellate Court would dismiss "for want of Jurisdiction." No Judgement upon the merits could be invoked.

39. With regard to whether the Court determined petitioners' Notice of Appeal was "frivolous" its appears the 8th Circuit Court has imposed Rule 47 to oppose FRAP Rule 3.

If the determination of the Appellate Court, with regard to a Notice of Appeal, was determined "frivolous," petitioners' request the One Supreme Court consider grounds the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "frivolousness." A notice of appeal, if determined to be frivolous,violates petitioners' rights to take an appeal.

40. With regard to whether the Court determined that petitioners' Notice of Appeal is "without merit" (number 3 above) its appears that the Eighth Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Notice of Appeal, was determined "without merit," petitioners' request the One Supreme Court consider grounds the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "without merit." FRAP Rule 3 allows for the petitioners to take the appeal as of right. The actions of the Appellate Court appear to be an attempt to prevent petitioners' opening brief from being filed. The Appellate Court could not have determined that issues raised or questions presented were without merit since no such issues or questions have yet been presented. Petitioners remained with 8 (eight) days to file such issues or questions when the Eighth Circuit Court of Appeals arbitrarily entered it's "summarily affirmation of the District Court's Order[s] and Judgement."

41. With regard to the Court affirming or reversing (number 4 above) when the questions presented do not require further consideration, the petitioners undeniably argue the Appellate Court did "summarily affirm" the District Court's Order but upon what questions presented is alarming.

Petitioners have not filed a Court Ordered opening brief (opening brief means petitioners survived jurisdictional test of Clerk) because eight days prior to such day of filing, the Appellate Court entered the "Judgement" herein now being requested to be reversed.

42. Petitioners have not formally presented, as of right, or been allowed to present any issues or questions for review and thus the Judgement of summarily affirmed should be "REVERSED".

RULE 47A(a) IS VIOLATIVE OF 1ST AMENDMENT

42. The Judicial power has no authority at the District Court to act as rule maker with regard to specific statute. The 8th Circuit Court of Appeals lacks authority to prevent petitioners from exercising their inherent rights to appeal the District Courts decision. In 1965, the Supreme Court said that:

> "The Constitution divides the National Government into three branches-Legislative, Executive and Judicial. This separation of powers' was obviously not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a bulwark against tyranny. For if governmental power is fractionalized, if a given policy can be implemented only by a combination of legislative enactment, judicial application, and executive implementation, no man or group of men will be able to impose its unchecked will."

James Madison wrote:

'The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self appointed, o r elective, may justly be pronounced the very definition of tyranny.'

The doctrine of separated powers is implemented by a number of constitutional provisions, some of which entrust certain jobs exclusively to certain branches, while others say that a given task is not to be performed by a given branch... Marbury v. Madison, 1 Cranch, 137.

Alexander Hamilton wrote:

'Nothing is more common than for a free people, in time of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves .... The name of liberty applied to such government, would be a mockery of common sense." United States v. Brown, 85 S.Ct. 1712-1713.

By banning bills of attainder, the Framers of the Constitution sought to guard against such dangers by limiting legislatures to the task of rule-making. Fletcher v. Peck, 6 Cranch 87, 136. Brown at 1713.

43. "The violation of the doctrine of separation of powers occurs when there is an assumption by one branch of powers that are central or essential to the operation of a coordinate branch, provided that the assumption disrupts the coordinate branch in the performance of its duties and is unnecessary to implement a legitimate policy of the government." I.N.S. v. Chadha 103 S.Ct. 2764.

44. The phrase "court of the United States" without more, means solely courts created by Congress under this article and not territorial courts. International Longshoremen's v. Warehousemen's Union, CIO, 1948, 170 F.2d 183, Cert denied at 69 S.Ct. 641, 936 and 1155. "But at most these other avenues of relief are speculative." I.N.S at 2777.

MONEY ARGUMENT

45. Since Julliard v. Greenman, S.Ct (110 U.S. 421), the Judicial Power involving Legal Tender placed Congressional Power under Article I, Section Eight, Clause Two, wherein this Court said:

> "The power to borrow money on the credit of the United States is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the **obligations of the United States** in any appropriate form, of stock, bonds, bills, or **NOTES**; and in whatever form they are issued, being instruments of the national government, they are exempt from taxation by the governments of the several States. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the government.

So much is settled beyond doubt, and was asserted or distinctly admitted by the judges who dissented from the decision in the Legal Tender Cases, as well as by those who concurred in that decision. Veazie Bank v. Fenno, 8 Wall. 533, 548; Hepburn v. Griswold, 8 Wall. 616, 636; Legal Tender Cases, 12 Wall. 543, 544, 560, 582, 610, 613, 637. It is equally well settled that Congress has the power....of issuing bills which, under ordinary circumstances, pass from hand to hand as money at their nominal value, and which, when so current, the law has always recognized as a good tender in payment of money debts, unless specifically objected to at the time of the tender."

46. In Chief Justice Marshall's words involving acts of Congress:

"Let the end be legitimate, let it be within the scope of the constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional." McCulloch v. Maryland, 4 Wheat, 421.

"Congress emitted bills of credit to a large amount, and did not, perhaps could not, make them a legal tender. This power resides in the states." Craig v. Missouri, 4 Pet. 410, 435

"If the words stand, they may suggest and lead to the emission." "The power, so far as it will be necessary to say, will be involved in that of borrowing." 5 Elliot, Deb. 434, 435, and note.

47. In United States v. South-Eastern Underwriters, 322 U.S. 533, the One Supreme Court said:

> "Courts do not ordinarily give words used in the Constitution narrower meanings than they had in common parlance when the Constitution was written."

48. Although it seems on the surface that the issues herein raised appear to have been well adjudicated upon the merits, the petitioner points out that quite the opposite applies;

> "Defendant's demurrer, which admitted the facts well pleaded in the petition, did not admit allegations which amounted to conclusions of law in relation to the nature of the gold certificates or the legal effect of the legislation under which they were issued, held, or to be redeemed. Dillon v. Barnard, 21 Wall. 430, 437; United States v.Ames, S.Ct (99 U.S. 35), 45; Int.Land Co. V. Maxwell Land Co., S.Ct (139 U.S. 569, 577, 578); Eq. Life Ass. Society V. Brown, S.Ct (213 U.S. 25, 43)." Nortz v. United States, S.Ct.(294 U.S. 325).

> "Plaintiff explicitly states his concurrence in the Government's contention that the Congress has complete authority to regulate the currency system of the country, He does not deny that, in exercising that authority, the Congress had power 'to appropriate unto the Government outstanding gold bullion, gold coin and gold certificates.'

Nor does he deny that the Congress had authority to compel all residents of this country to deliver unto the Government all gold bullion, gold coins and gold certificates in their possession.'" Knox v. Lee, 12 Wall. 457; Julliard v. Greenman, S.Ct (110 U.S. 421); Ling Su Fan v. U.S., S.Ct (218 U.S.302); Norman v. Balt. & Ohio R. Co., 55 S.Ct. 497.

49. On June 5th, 1933, Congress passed a Joint Resolution 48 Stat. 112, amending the Emergency Farm Mortgage Act of May 12, 1933, wherein it defined at section (b) that the term obligation means an obligation payable in money of the United States; and the term coin and currency means coin or currency of the United States, including Federal Reserve notes... This resolution provided also that "every obligation, heretofore, or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

50. The Supreme Court also stated that:

"There is a well-known law of currency, that notes or promises to pay, unless made conveniently and promptly convertible into coin at the will of the holder, can never, except under unusual and abnormal conditions, be at par in circulation with coin. It is an equally well-known law, that depreciation of notes must increase with the increase of the quantity put in circulation and the diminution of confidence in the ability or disposition to redeem.

> Admitted then...assuming that the act is warranted by the Constitution, when depreciation reached its lowest point,to accept in payment a thousand **NOTE** dollars, although with the thousand coin dollars, due under the contract, he could have purchased on that day two thousand eight hundred and fifty such [note] dollars."

51. Due to the fact the United States argues that all powers conferred to it are powers which involve money, and that issuing bills of credit are an exercise of [any] all powers, the Hepburn Court raised the question "Can this proposition be maintained[?]." The Court answered the question in the negative that:

> "the admission of a legislative power to determine finally what powers have the described relation as means to the execution absolutely and without liability to question, in cases involving private rights, the powers thus determined to have the relation, would completely change the nature of American government. It would covert the government, which the people ordained as a government of limited powers, into a government of unlimited powers. It would confuse the boundaries which separate the executive and judicial from the legislative authority. It would obliterate every criterion which this court, speaking through the venerated Chief Justice in the case already cited, establish for the determination of the question whether legislative acts are constitutional or unconstitutional.

Now, then, let it be considered what has actually been done in the provisions of a National Currency." Hepburn v.Griswold 8 Wall at 618.

52. The question thus arises "what is lawful money of account of the United States and what is the dollar quantity thereof[?]." First, all Federal Reserve notes are issued pursuant to the Sixty-Third Congress. Sess. II Ch. 6, where by Congress, allegedly among means appropriate, plainly adapted, really calculated, as the legislature exercising an unrestricted choice (quoting Hepburn). Included within its choice, Section 16 of the act of December 23, 1913, H.R. 7837, Public Number 43.

53. This Section purported that "Federal Reserve notes... issued...for purpose of making advances...and for no other purpose are authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in gold on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or in gold or lawful money at any Federal reserve bank."

54. Section 16 was later amended by the Seventy-Third Congress. Sess. II. Ch. 6, H.R. 6976, Public Number 87, whereby the third sentence of the original first paragraph is amended to read as follows: "They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank. This section remains unamended and in full force.

55. The question thus arises "are all Federal Reserve notes in circulation issues which conform upon their face to Section 16 of the act of December 23, 1913 as amended[?]." This question requires another question to be addressed first. "Are all Federal Reserve notes, issued pursuant to Section 16 of the act of December 23, 1913, as amended, redeemable in lawful money at any Federal Reserve bank or at the Treasury Department.

56. This question requires yet the answer to another question which is what is "lawful money of the United States as defined and intended by the spirit of the Constitution[?]." This question demands yet a final answer to a question "what is money enumerated in the Constitution."

57. This Court answered the question of what is Money by saying:

> "There is nothing in the terms of the act which looks to any difference in its operation on different descriptions of debts payable generally in money-that is to say in dollars and parts of dollars. Hepburn, at 609

58. The Act of April 2, 1792, Second-Congress, Sess. I, Ch. 16, Section 9 provides the answer to the question of defining the substance of a "dollar."

> "Dollar or Units-each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and ten sixteenth parts of grain of pure, or four hundred and eighty-five grains of standard silver.

59. In 31 U.S.C. § 5101, pursuant to Public Law 97-258, Congress found that "United States Money is expressed in dollars, dimes or tenths, cents or hundredths, and mills of thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar."

60. United States Money is then a mill of a dollar. A mill is then one-tenth of a cent. Conclusively, United States Money is today measured in mills of cents. At no time did Congress express that United States Money is expressed in Federal Reserve notes.

61. The answer to the question "What is Money as defined and intended by the spirit of the Constitution" is **coin** as measured and struck in fractions of dollars measured by cents as defined by the current Coinage Act of April 2, 1792 in section 9, where it states that "Cents-each to be of the value of the one hundredth part of a dollar, and to contain eleven penny-weights of copper," and is devisable in fractions of a dollar or in 1-cent, 5-cents, 10-cents, 25 cents, 50 cents, 100 cents equals one dollar.

62. The answer to the question "what is lawful Money of the United States" or in other word what is legally warranted by the Constitutions enumeration to be Money and the answer is Coin measured by certain parity which equals fineness and weight.

63. The answer to the question do all Federal Reserve notes issued pursuant to section 16 of the Federal Reserve Act of 1913, as amended, require redemption in lawful money at any Federal Reserve Bank. The answer Yes. Each note being redeemable dollar for note would mean that in order for each Federal Reserve note to be "Legal Tender" all Federal Reserve notes must be secured by dollars, claimable on demand and as defined in the Coinage Act of April 2, 1792, as amended.

64. Congress was expressly enumerated with the power to punish any person[s] who "issues counterfeit securities or current coin of the United States," at Article I, Section 8, Clause 6. This shows the intent that are founding fathers never intended for any Thing but Dollars representing a parity of Gold or Silver content, or at the very least some metal coin of distinguishable character, fineness and weight, as defined above, to be circulating as securities or currency allegedly redeemable in lawful money when no such security exist by, of or in U.S.

65. The evidence of the money borrowed is the note or security issued and thus the note or security could never become that which it purports to secure or borrow. 12 U.S.C. § 411, as amended, provides that the substance of a Federal Reserve note is required to be "lawful money." A defining character of said note is its to be redeemed on demand in lawful money at any Federal Reserve bank or the Department of Treasury.

66. Demanding petitioners' labor exchanging for unredeemable Federal Reserve notes is in violation to petitioner's right to due process.

67. Each State in the Union is prohibited from tendering any Thing but Gold and Silver coin as a legal tender in payment of debt. Article I, Section 10, Clause 1. Since Federal Reserve notes are unredeemable, and that said Union States rely upon collection of said notes to pay their debts, the Supreme Court's decisions in the Gold cases attempts to nullify the prohibitions against Union States in violation to any power conferred to the United States, whatsoever, mandating violations of the specific prohibitions involving that of money, namely, Article I, § 8, Clause, 1,2,3,4,5,6,18, and in § 9, Clause 3,7, and in § 10, Clauses 1.

68. When the District and Appellate Courts refuse to consider certain clear intent of the Federal Reserve note issuing statute, namely that which requires the note to be redeemed in lawful money, what adequate means to attain relief is available to petitioners.

INVOLUNTARY SERVITUDE

69. Petitioners are being held against their will to enforced compulsory service to the United States by way of the Internal Revenue Service employees reckless and intentional disregard in application of the Internal Revenue Laws. Petitioners have well documented their intent and the terms of their involvement in the 10th amendment. As the 10th Circuit Court stated in Porth v. Brodrick, 214 F.2d 825, "if the tax laws were classified as a kind of servitude, they would not be the same kind of involuntary servitude as contemplated within the 13th amendment." Since the tax laws would not be the same kind of involuntary servitude as contemplated in the 13th amendment, the tax laws must be of a voluntary servitude in their nature. 70. In Hodges v. United States, 203 U.S. 1, 17, the One Supreme Court stated that "servitude is by the same authority declared to be 'the state of voluntary or compulsory subjection to a master.'"

71. Petitioners alleged defendants individually named in their 26 U.S.C. § 7433 damage action were agents of a foreign principal and not agents of the United States Government.

72. The United State has developed an elaborate scheme whereby pursuant to the Power to Borrow Money on the Credit of the United States, it has, in furtherance of aid to its Power to Coin Money, regulate the value thereof and fixing the standard of weights and measures under the necessary and proper rule of Article One, Section Eight, Clause Eighteen of the Constitution, results of which produced the appearance that Federal Reserve notes, which printed upon those instruments is the word "Dollar", are somehow U.S. Dollars, thus considered Money as defined throughout the spirit and intent of those limited enumerated powers of Section Eight of the First Article and all other usages of the term "Money" therein and are incorrectly imposed equity claims of tax upon petitioners' rights to exist for no legitimate exercise of any powers enumerated.

73. Petitioners have right to be heard in order to prepare a record on appeal which could shape the issues herein presented, allowing a 30 page Writ of Certiorari to accomplish what petitioners deem need to redress.

10th AMENDMENT ARGUMENT AMONG THE SEVERAL STATES

74. The phrase "among the several States" included in the direct language of the 16th amendment means interstate as it has always been defined prior to and ever since same.

75. In United States v. Lopez, 115 S.Ct 1624 (1995) the Supreme Court struck down and invalidated the Gun Free School Zones Act, 18 U.S.C. § 922(q).

76. The Supreme Court, in an opinion by Chief Justice Renquist, held that the Gun Free School Zone Act, making it a federal offence for any individual to knowingly possess firearms at a place that the individual knows or has reasonable cause to believe is a school zone, exceeded Congress' Commerce Clause authority since possession of a gun in a local school zone was not an economic activity that substantially affected interstate commerce.

77. In its opinion, the Supreme Court divided permissible Commerce Clause regulation into three categories:

1. "the use of the channels of interstate commerce;"
2. "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activity"
3. "those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce."

78. The Court concluded that section 922 (q), classified in the third category, failed to substantially affect interstate commerce. Lopez, @ 1629-1630.

79. As the 16th amendment contain no jurisdictional nexus element which would ensure though case-by-case inquiry that the action in question affects interstate commerce, then the Court must ask whether the amendments constitut-ionality, of the constitutionality of its application in a particular case, is supported by the findings in the legis-lative history of the amendment, the litigants' proffered challenge to the constitutionality of the amendment, or by the Court's own attribution of congress-ional purpose to the amendment.

80. The 16th amendment congress-ional findings contain no logical stopping point that could serve as a surrogate for the missing jurisdictional nexus requirement. Regulating activity of petitioners is in no sense necessary to regulate the Internal Revenue Laws. The 16th amendment through the Commerce Clause would thus be converted into a general police power.

81. The District Court incorrectly decided facts relating to Congressional authority involving income tax derived from sources "among the several States. The phrase "among the several States" adopted in the language of the 16th amendment as taken either from Article I, § 2, Cl. 3 or Article I, § 8 has unanimously been determined to mean "interstate" by the One Supreme Court and which statistically, has no effect upon other Union States wholly intrastate, directly or indirectly.

82. The Xth Amendment of the Constitution created by the States of the Union limits the power of the United States to it specific designations. See New York v. United States, 505, __ __ (1992) (slip at 7) "No one disputes the proposition that the Constitution created a Federal Government of limited powers." (Gregory v. Ashcroft, 501 U.S. 452, 457 (1991); Maryland v. Wirtz, 392 U.S. 183, 196(1968); NLRB v. Jones, 301 U.S. 1, 37 (1937); Cf. Chisolm v. Georgia, 2 Dall, 419, 435 (1793) (Iredell, J.) "Each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them." The powers accorded Congress are enumerated specifically at Article I, Section 8, ale. 1-18 and 1, Section 9.

83. The Court took great pains to make clear that Congress could not regulate commerce "which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect of other States." Gibbons v. Ogden, 9 wheat 1, at 194-196. But even if one were to adopt the reading that the "affects" language, at most, permits Congress to regulate only intrastate commerce that substantially affects interstate and foreign Commerce the limitation is self evident. This determination arrived due to the direct language of the Commerce Clause at Article I, § 8, Cl. 3 is the limitation phrase "among the several States."

> "Congress shall have the power to lay and collect taxes...(lden. 3) to regulate Commerce with foreign nations, among the several States, and with the Indian Tribes."(Art. 1, § 8, Cl. 3).

84. Although the distinction between what is commerce among the several States and what is income derived from sources among the several States appears to be different in subject matter, "Comprehensive as the word 'among' is it may very properly be restricted to that commerce which concerns more State than one...The enumeration presupposes something not enumerated and that something, if we regard the language or the subject of the sentence must be the exclusive commerce of a State." (Gibbons Court, Id. 194-196). As in the instant case the issue is whether or not Congress enacted statutes which compel the filing of a 1040 U.S. Interstate Individual Income Tax Return absent records relating to such when no evidence indicates any notes received among the several States.

In this sense, if we regard the language or the subject of the sentence, involving the 16th amendment, the 16th involves the exclusive recipt of money concerning more States than one.

85. The phrase "among the several States" as appearing in the Constitution enumerated by the State of the Union means "interstate". Seemingly, no judicial determination is available on this issue beyond the **Lopez** analysis.

86. The phrase "among the several States" specifically limits the Jurisdiction for the 16th Amendment.

87. The "16th amendment declares that Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. It was not the purpose or effect of the Amendment to bring any new subjects within the taxing power. In determining what constitutes income substance rather than form is to be given controlling weight. Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926).

88. The " 16th amendment added no new taxing power to Congress." Brushaber.

89. Court of Appeals had no justifiable reason as to why petitioners' rights to appeal the decision of the District Court was abridged arbitrarily without explanation, and without the 8th Circuit Court reviewing the questions presented involving the 16th amendment.

7433 DAMAGE CLAIMS

90. Petitioners maintain damage claims pursuant to 26 U.S.C. § 7433 can be maintained against individual agents of the Internal Revenue Service for their reckless and intentional disregard for the internal revenue laws. The District Court suggest that Bivens claims against these defendants is not appropriate because Congress has enacted a remedial mechanism which allows petitioners to redress against the United States for their employees conduct.

91. Allowing the District Court's judgement to stand has the absurd affect that all Internal Revenue Service employees whom act reckless and intentional disregard for the law are somehom elevated above the law. If the President is not above the Law, see Jones v. Clinton, then neither are these individually named defendants.

92. Petitioners believe that Internal Revenue Service employees are not entitled to qualified immunity as "agents" of the United States Government are conserned. Petitioners believe the term agent, as other terms are abused, is being stretched beyond presuposition.

TAXING WIHTOUT APPORTIONMENT

93. The District Court determined that Congress may impose its taxing will upon people of each Union State directly, and without regard to anything, whatsoever. Petitioners can not subscribe to the District Court's determinations. When the 16th amendment removed the rule of apportionment, it did not remove the 10th amendment. Congress has no power enumerated to impose a liability upon Union State Citizens for the mere right to exist. Taxing among the several States and taxing among the several people are two different directives. One being endorced by the Constitution and the other strictly forbidden.

94. The Internal Revenue Laws, if found by the One Supreme Court to endorce legislation affecting Union State Citizens, is undeniably unconstitutional.

CONCLUSION

The petitioners' request One Supreme Court hear oral argument on this an other like cases involving right to be heard involving questions presented herein

Therefore, the petition for Writ of Certiorari should issue.

Respectfully Submitted

Date: February 13, 1998

Supreme Court, U.S.
FILED

97 1629 MAR 14 1998

(2)

No. OFFICE OF THE CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1997

Rodney Joseph Cox, et al.,

Petitioners,

v.

United States, Assistant Director
James Grant, et al.,

Respondents.

Appendix A

ON WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Rodney Joseph Cox, et al.,
RT 2 Box 118
Strombsburg Nebraska 68666
816-632-2087

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36 pp

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JURISDICTION

This is a Civil Claim for Damage action for certain unauthorized collection actions by the United States, et al., as well as those named and unnamed individuals within and without their official capacity employed and hidden by United States, et al. The 16th amendment to the United States Constitution in no way authorizes revocation of the 13th amendment, whatsoever.

This court has jurisdiction pursuant to 28 U.S.C, section 1340, 26 U.S.C. section 7433. Treasury Claims pursuant to 26 CFR 301.7433 have been duly filed by all Plaintiffs. No administrative remedy exists within any other statute for purposes of this action except at 26 U.S.C. 7433. No decision was presented by the Defendants in opposition to said Claims, whatsoever. The Sovereign Immunity of the United States is officially waived pursuant to the Defendants' decision to remain silent for a period of six months as specified at 26 CFR 301.7433-1(d)ii and therefore judgement is assured.

THE PARTIES

1. For purpose of the Federal Income Tax, Plaintiffs Linda Secora, et al., are members of a class of people (U.S. Citizens, Residents Aliens, and/or Non-resident Aliens) who at no time during the taxable year are engaged in a trade or business within the United States, and are so defined at 26 CFR 1.871-1(b)(i). All U.S obligations received by the Petitioners are gross securities defined at 26 U.S.C. 165(g) from sources without the United States.

2. On information and belief, Defendants United States, et al., are acting as agents of a foreign principal and not agents of the United States Government. The Defendant United States has employed and or devised schemes (hereinafter referred to as scheme) which purports to compel the voluntary compliance of the Plaintiffs with respect to the 16th amendment to the United States Constitution [codified at 26 U.S.C]. Said scheme purports to be successful upon the United States receiving a 1040 U.S. Individual Income Tax Return from the Plaintiffs which by label "elects" the Plaintiffs to be treated as subjects of the Internal Revenue tax.

3. On information and belief, Defendants named individually are in part, acting as Officers, Agents, Special Agents, or Employees of the United States Government in concert with others for the purpose of compelling the "scheme" implemented as their belief as to what the United States laws require. Fraud, coercion, fear and extortion are instruments of deception used by these Defendants for the purpose of compelling their "scheme".

4. On information and belief, Defendants individually are acting in part, outside their official capacity for the purpose of compelling their "scheme" and as such are personally liable for their conduct to the Plaintiffs. The Plaintiffs are unaware of any Law which would authorize acts against the free will of the Plaintiffs due to the substantial effect of the 13th amendment.

5. On information and belief, the 13th amendment is conclusive and remains without exception. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all beneficiaries to the 13th amendment. U.S. Citizens, Resident Aliens, and Non-resident Aliens, are all potential targets of the "voluntary compliance scheme".

NATURE OF CLAIM

6. Plaintiffs bring this action pursuant to 26 CFR 1.6013.6(b) and 1.871-10(d), thereby "electing" to revoke all 1040 Form elections to be treated as "residents" of the United States and to "treat real property income as effectively connected within the United States". Plaintiffs' claim for damages arose from fraud, coercion, and fear of the Defendants, thereby creating a mistake of law on the part of the Plaintiffs (See Exhibit A). The Defendants by supposed Sovereignty, have confined the Plaintiffs into **INVOLUNTARY SERVITUDE** in violation to the Thirteenth Amendment to the United States Constitution.

7. The amount of Judgement Damage award claimed is One Million Dollars of value and the direct economic damages sought is Twenty Million Dollars of value per each Claimant. The Defendants remain without opposition to Plaintiffs' Treasury Claims, thus the United States agrees for judgment in favor of Plaintiffs. (26 U.S.C. 7433(b). Exhaustion of all Administrative Remedies (26 U.S.C. 7433(d)1) has occurred, consent to suit exists within said record, and thus the United States sovereign immunity is waived pursuant to this action.

8. On June 23, 1995 in Joeckel, et al., v. United States, 4:95-CV-3016 8th Cir. 95-3532NEL, **AFFIRMED July 5, 1996)** this Court Ordered Joeckel, supra, dismissed for Lack of **Subject Matter Jurisdiction, and for Failure to State a Claim for which relief can be Granted** (Fed. R. 12(b)1 and 12(b)6).

9. In Joeckel, Supra, the Court relied upon the Defence of the United States which showed Plaintiffs' failure to file Treasury Claims as a means to which Joeckel, supra ought be dismissed. The Court found consent to this action did not exist. The Court found no evidence of any waiver of the United States sovereign immunity.

10. The Court, in Joeckel, supra, found that "judgement for damages shall not be awarded under subsection (b) unless the Court determines that the plaintiffs have exhausted the administrative remedies available to such plaintiffs within the Internal Revenue Service." The plaintiffs found that 26 CFR 301.7433 offers a waiver of Sovereign Immunity to such Plaintiffs upon the earlier of two options, 301.7433-1(d)i and or 301.7433-1(d)(ii). This action was dismissed without prejudice. The United States waives its Sovereign Immunity in the instant action pursuant to decisions rendered under 26 CFR 301.7433-1(d)i.

BACKGROUND

11. In 1865, the 13th Amendment was adopted to the United States Constitution, signed and authorized by the President of the United States at that time, Abe Lincoln. The 13th amendment states:

"Neither slavery nor involuntary servitude...shall exist in the United States or any place subject to their jurisdiction..."

12. On information and belief, Congress has jurisdiction over all things subject to their jurisdiction.

13. On information and belief, Congress passed the Corporation Income Tax Act of 1909. This act is thus subject to the Jurisdiction of the United States.

14. On February 25, 1913, Philander C. Knox, Secretary of State of the United States of America, published in the PRIVATE LAW of the UNITED STATES OF AMERICA by the SIXTY-SECOND CONGRESS, 1911-1913, on page 1785, his proclamation that the Sixteenth (16th) Amendment had been ratified by the states, thereby authorizing Congress to tax income under the Corporation Income Tax Act of 1909 on Federal Corporations (Subjects of Congress).

15. On information and belief, the Supreme Court of the United States ruled that: "This Amendment does not extend the taxing power to new subjects, ----". BRUSHABER v. UNION PACIFIC R. CO., 240 U.S. 1, 60 L.ed 493, 36 S. Ct. 236; STANTON v. BALTIC MINING CO., 240 U.S. 103, 60 L. ed 546, 36 S.Ct 278. The term "taxpayer" is defined at 26 U.S.C.[1988] 7701(a)(14) as any person subject to the Internal Revenue tax.

16. On information and belief, Congress passed 26 U.S.C. section 6013(a)(1) which states that "no joint return shall be made if either the husband or the wife at any time during the taxable year is a nonresident alien;".

17. On information and belief, Congress also made provision at 26 U.S.C. sec. 6013(g)(h) for a nonresident alien to "elect" to be treated as a resident of the United States (subject to Congress). Thus, the voluntary nature of the Federal Income Tax comes into play.

18. On information and belief, Plaintiffs are unaware of any constitutional authority for Congress or any part of the federal government to make any adhesion contract that would take away the sovereignty of the people or states of the Union. Therefore, the Defendant's reliance upon writing and/or making of "word-of-art" definitions in statutes and/or regulations that entrap the sovereigns is clearly unconstitutional. Methods promoted by Congress that seek the voluntary election of a People in procuring subject status with the United States [**26 U.S.C. 7701(A)(14) "taxpayer defined"; "the term taxpayer means any person subject to the Internal Revenue tax"**], should and is clearly only held by the United States at the discretion and meaning of the term voluntary subjection (**servitude**). Once "taxpayers" elect to revoke said voluntary election (servitude), said People are no longer considered subjects to the Internal Revenue tax by **LAW**.

19. On information and belief, the Secretary also made provision, at 26 CFR 1.6013-6(b) for "An election under this section shall terminate if either spouse revokes the election"; and 1.871-10(d)(1) or (2) whereby a decision to revoke an "election" may be made with or without the consent of the Commissioner.

Construction of the Statutes otherwise establishes Congressional Acts of **INVOLUNTARY SERVITUDE [Slavery] in direct violation to the 13th amendment.**

20. On information and belief, based upon the complexities of the tax Laws, Plaintiffs are unaware of any statutes, rules, or regulations which would compel the "voluntary compliance scheme" employed by the plaintiffs to file any U.S. Individual Income Tax Returns. The United States enjoins such schemes in an attempt to further coerce Plaintiffs (People) into "voluntary servitude".

21. Servitude and subjection have synonymous meanings.

COUNT I

22. On information and belief, the Defendants have recklessly and intentionally disregarded the provisions of title 26 section 6013(g)(h), 871(d) and the regulations promulgated thereunder and have refused, by fraud, coercion, fear to allow the Plaintiffs their rights to revoke the original Forms 1040 "elections" for all tax years ab initio, pursuant to 26 CFR 1.6013-6(b) and 1.871-10(d)(1), which were obtained by the Defendants involving purported acts of a voluntary nature (SEE 2nd Codicil attached within Exhibit A.

23. The actions of the Defendants have been reckless and intentional, with no statute or regulation authority, and have caused and are causing the Plaintiffs to suffer Slavery, and much financial damage.

COUNT II

24. The Defendants, have in part, within their official capacities and in part without official capacities, consciously, knowingly and willingly placed each Plaintiff herein under involuntary subjection to the 16th amendment, in violation of the 13th amendment to the Constitution for the United States of America.

CONCLUSION

Wherefore, Plaintiffs Linda Secora, et al, request that this court enter judgement in its favor and against the Defendants and hereby claim actual, direct economic damages as a proximate result of the reckless and/or intentional actions of the Defendants, pursuant to exhaustion of all administrative remedy pursuant to 26 U.S.C. § 7433(d)1. Judgement according to Treasury Claims 26 CFR 301.7433 is justifiably adequate.

SEE SIGNATURE PAGE LIST ATTACHED

UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Linda Secora, et al.,

v. 4:CV96-3356

United States, et al.,

MEMORANDUM AND ORDER ON
DEFENDANTS MOTION TO DISMISS

The defendants have brought a motion to dismiss the plaintiffs' complaint for lack of jurisdiction and failure to state a claim. (file 63). I have reviewed this matter and shall grant the defendants motion to dismiss. The plaintiffs however, shall be permitted to amend their complaint.

BACKGROUND

The plaintiffs are a group of Nebraska residents who are protesting the collection of their federal income taxes. They are not represented by counsel. They base their lawsuit on the argument that the continued application of the federal income tax laws to them violates the thirteenth amendment' proscription on involuntary servitude. The plaintiffs claim they have revoked their "election" to be considered United States taxpayers ab initio, that the defendants have, in effect, refused to honor their revocation, and that they are being forced to serve in violation of the thirteenth amendment. Implicit in the argument is the idea that they are non-

resident aliens to the United States. They have named as defendants the United States and many agents and employees of the Internal Revenue Service (I.R.S.)

The plaintiffs filed this action on September 20, 1996. Shortly thereafter, the magistrate judge entered an order pursuant to Nebraska L.R. 3.4, ordering summons to be issued to the defendants and requiring them to enter an appearance, but not otherwise directing them to respond to the complaint until directed to do so following his review of the complaint. (filing # 2). The plaintiffs objected to the magistrate judge's order. (filing 47). In light of Eighth Circuit precedent, I set aside hi order and directed the defendants to respond. (filing 56). They have done so, filing this motion to dismiss.

STANDARD OF REVIEW

"A motion to dismiss based on lack of subject matter jurisdiction is an argument that the court lacks the power to hear the class of cases to which the plaintiffs's claim belongs." FGS Constructors, Inc. v. Carlow, 823 F. Supp. 1508, 1511. (D.S.D. 1993), See Continental Cablevision, Inc. v. United States Postal Service, 945 F.2d. 1434, 1437-38(8th Cir. 1991)(holding subject matter jurisdiction relates to power of court to hear class of claims in which plaintiff's claim falls). The motion to dismiss may challenge either the factual truthfulness or the facial sufficiency of the plaintiffs jurisdictional allegations. Titus v. Sullivan, 4 F3d. 590, 593 (8th Cir. 1993)(citing Osborn v. United States, 918 F.2d. 724, 730 n.6(8th Cir. 1990).

When the court confronts a facial challenge, the court must presume all of the plaintiffs jurisdictional allegations to be true. d.If the plaintiff fails to allege a necessary element to support jurisdiction then the court must grant the motion to dismiss. Id.

DISCUSSION

Before addressing the defendants' motion to dismiss, I must first consider whether this court has subject matter jurisdiction to this action. The plaintiffs assert that subject matter jurisdiction is founded on 28 U.S.C. § 1340 (1994) and 26 U.S.C. § 7433(as amended). Section 1340 of title 28 of the United States Code grants the federal district courts original jurisdiction over "any civil action arising under any Act of Congress providing for Internal Revenue." Id. However, in order for a plaintiff to be able to sue under this provision, the United States must have waived its sovereign immunity with respect to the provision of the federal tax laws in question. Aqua BAr & Lounge, Inc United States Dept. of Treas., Internal Reve. Srv. 539 F.2d. 935 (3rd Cir. 1976)(holding grant of subject matter jurisdiction to district courts in 28 U.S.C. § 1340 is not a waiver of sovereign immunity); Essex v. Vinal, 499 F.2d. 226, 231 (8th Cir. 1074)(same), cert denied, 419 U.S. 1107 (1975); Geurkink Farms Inc. v. United States 452 F.2d. 643 (7th Cir. 1971)(same). Section 7433 of title 26 of the United States Code is such a waiver of the United States' sovereign immunity, but only with respect to lawsuits brought by a taxpayer for unauthorized

practices by I.R.S. officers or employees in the collection of the taxpayer's federal taxes. See 26 U.S.C. § 7433. Nominal, this is a lawsuit over the allegedly unauthorized collection actions of I.R.S. employees. Therefore, for the purpose of this motion to dismiss, I will accept that this case is properly brought under section 7433.

The defendants raise two main points in their motion to dismiss. First the contend that the individual defendants should be dismissed because under 28 U.S.C. § 7433, they may not be made parties to this action. Their position is well-taken. Section 7433 of title 26 of the United States Code permits a taxpayer to bring a lawsuit against the United States for unauthorized practices by I.R.S. officers or employees in the collection of the taxpayer's federal taxes. In relevant part, section 7433(a) states:

> If in connection with any collection of federal tax with respect to a taxpayer, any officer or employee of the internal revenue service recklessly and intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States...[S]uch civil action shall be the exclusive remedy for recovering damages resulting from such action.

26 U.S.C. § 7433(a)(emphasis added). The taxpayers exclusive remedy is an action for damages against the United States and not against individual I.R.S. officers or employees, not even those who allegedly recklessly or intentionally violated the law or regulation. Vennes v. An Unkown Number of Unidentified Agents, 26 F.3d. 1148, 145 (8th Cir. 1994), cert denied, 513 U.S. 1076(1995)(holding section 7433 is the exclusive remedy authorized by Congress)(citing McMillen v. United States, 960 F.2d. 187, 190-91(1st Cir. 1991); Wages v. Internal Revenue Service, 915 F.2d. 1230, 1235 (9th Cir. 1990), cert denied, 498 U.S. 1096(1991); National Commodity & Barter Ass'n v. Gibbs, 886 F.2d 1240, 1248 (10th Cir. 1989));Brown v. Johnson, 889 F.Supp. 355 (W.D. Ark. 1995). See also Baddour. Inc. v. United States, 802 F.2d 801, 808 (5th Cir. 1986); Cameron v. Internal Revenue Service, 773 F.2d. 126, 129 (7th Cir. 1985). Therefore, this court lacks jurisdiction to hear claims against the individual defendants. For this reason, these defendants shall be dismissed.

The defendants' second contention is that the United States should be dismissed because the plaintiffs complaint fails to state a claim upon which any relief can be granted. The plaintiffs argue that forced payment of taxes after they have revoked their taxpayer status results in their involuntary servitude in violation of the thirteenth amendment. It is the defendants' position that that argument is frivolous and fails to state a claim. Again, defendants position is well-taken.

The federal income tax is constitutional, see e.g. Cook v. Spillman, 806 F.2d. 948(9th Cir. 1986); United States v. Ferguson, 793 F.2d. 828(7th Cir.), cert denied, 479 U.S. 933(1986), and it does not result in involuntary servitude either in the payment of taxes or in its requirement that person who have a certain level of income must file a tax return and maintain supporting documents and records. See e.g. Cracchiola v. CIR 643 F.2d. 1383 (9th Cir. 1981); Ginter v. Southern, 611 F.2d. 1226, 1228-29 n-2 (9th Cir. 1979), cert denied, 446 U.S. 967 (1980); Kasey v. CIR, 457 F.2d. 369(9th Cir.), cert denied, 409 U.S. 869 (1972); Abney v. Campbell, 206 F.2d. 836 (5th Cir. 1953), cert denied, 346 U.S. 924(1970), reh'g denied, 402 U.S. 925 (1971); Porth v. Brodrick, 214 F.2d. 925(10th Cir. 1954); Beltran v. Cohen, 303 F.Supp. 889(N.D. Cal 1969)

The sixteenth amendment authorizes the imposition of a federal tax on incomes form whatever source derived. U.S. Const. amendment XVI. This amendment and the laws providing for internal revenue do not violate the thirteenth amendment. The latter is directed at prohibiting compulsory labor akin to slavery or that in practice would lead to slavery or work by force without choice. In no way does the requirement that persons reaching a certain threshold of income must file and pay taxes from those person to labor. To work or not work is the choice of the individual, the federal government does not compel one or the other. The thirteenth amendment is not violated by the sixteenth amendment. Such a contention is frivolous.

I also note that the plaintiff's argument implicitly relies on the premise that they are not residents of the United States. Their reliance on 26 U.S.C. § 6013(g) and (h), provisions dealing with non-resident aliens to the United States who choose to be treated as residents with respect to their federal income taxes, as well as their use of "without U.S." and "postal zone" in their filings and submissions leads me to this conclusion. Any contention that they are not residents of the United States as residents of the State of Nebraska, is meritless. As I have noted before;

The term United States is properly used to designate the territory over with the sovereignty of the United States extends. Hooven Allison v. Evatt, 324 U.S. 652, 671072(1945), overruled on other grounds sub nom, Limbach v. Hooven Allison, 466 U.S. 353 (1984). The sovereignty of the United States extends to all the states comprising it. The United States was not created as a separate state, but as a union of other States, of which each state is a part. Thus, at the time of the ratification of the Constitution, the "United States" referred to those states which had adopted the Constitution. Since that time, the United States has come to comprise the fifty states. Furthermore, when the United States came into being it was not limited to the territory of the District of Columbia, which did not yet even exist. Instead, the authority of the United States under the Constitution was understood to extend to the area bounded by the several states.

In addition, the United States Constitution provides for the admission of new states to the Union. See United States Const. art IV, § 3, cl.1. Pursuant to that provision, on March 1, 1867, Nebraska voluntarily entered into the Union created by the United States Constitution. The proclamation of admission of the State reads:

> "The people of Nebraska now ask for admission...."

Thus Nebraska entered the Union by actions initiated by its own citizens. As a state of the Union, it becomes subject to the laws of the United States, including those enacted by Congress dealing with the generation of revenue for the federal government. Nebraska is a part of the whole of the United States of America, rather than a state foreign to it. Thus its residents are residents of the United States.

Albers v. Internal Revenue, 1996 WL 196657(D. Neb. Feb. 15, 1996)(4:CV95-3068). As residents of the United States, they may not rely on section 6013(g) or (h) in making any argument that they have rescinded their election to be treated as residents and, therefore, taxpayers of the United States. The Plaintiffs complaint shall be dismissed. Furthermore, in light of the foregoing the plaintiffs' motion for relief, filing 61, is denied.

Finally, a further reason for dismissing this actin exists. Specially the plaintiffs failed to state what action were taken by the I.R.S. employees and

officers that violated federal law or regulation, separate from their alleged violations of the Thirteenth Amendment. The Plaintiffs have made generalized allegations of fraud, coercion and duress in their complaint, but these are based on their alleged violations of the thirteenth amendment in collecting the plaintiffs federal taxes. These are not sufficient to show what each defendant allegedly did, either recklessly or intentionally violating other federal law or regulations. There must be at least some statement to show what each defendant did to violate federal law in collecting the plaintiffs taxes. Federal Rules of Civil Procedures 8 demands sufficient information be included in the complaint to put the defendants on notice as to what action for which the plaintiffs are seeking to hold them responsible. Fed.R.Civ.P. 8. This plaintiffs have failed to do.

IT IS ORDERED that the defendants motion to dismiss, filing 63, is hereby granted. The plaintiffs shall have until April 30, 1997, to file an amended complaint.

IT IS FURTHER ORDERED that the plaintiffs motion for relief, filing 61, is hereby denied.

Dated April 18, 1997

Warren K. Urbom
United State Senior District Judge

PUBLISHER'S NOTE:

THE FOLLOWING PAGE WAS UNAVAILABLE FOR

18

TILMING:

States as defendants. I however, dismissed the individual defendants for lack of subject matter jurisdiction, as lawsuits brought pursuant to 26 U.S.C. § 7433, may only be brought against the United States. In that same memorandum, I dismissed the claim against the United States for failure to state a claim upon which any relief could be granted, because the basis of the plaintiffs lawsuit, namely that the continued application of the federal income tax laws to them violated the thirteenth amendments proscription on involuntary servitude, was frivolous, I granted the complainants an opportunity to file an amended pleading noting that they must allege facts that show what the I.R.S. agents did that violated federal law.

In accord with my order, the plaintiffs have filed an amended complaint with the court. In it they have forgone their thirteenth amendment argument but now allege that the sixteenth amendment applies only to income generated from interstate commerce.(filing 85). The plaintiffs claim that the I.R.S. employees assessments and collection of income from them violated the sixteenth amendment, because the plaintiffs derived all their income from purely intrastate activities. As a result, they claim they are not required to pay income tax. The United States has moved to dismiss the plaintiffs complaint pursuant to Rule 12(b)(6). (filing 87)

STANDARD OF REVIEW

Pursuant to Rule 12(b)(6), a motion to dismiss a complaint should not be granted unless it appears beyond doubt that the

plaintiff can prove no set of facts which would entitle him to relief. Morton v. Becker, 793 F.2d. 185, 187 (8th Cir. 1986)(citing Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787(8th Cir., cert denied, 444 U.S. 899(1979)); Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). In resolving such a motion, all well pleaded allegations in the complaint must be taken as true and all reasonable inferences arising therefrom must be weighed in favor of the plaintiffs. Morton 793 F.2d. 187.

DISCUSSION

The plaintiffs section 7433 claim is based on their belief that the I.R.S. employees violated the sixteenth amendment by assessing and collecting federal, personal income tax from plaintiffs, whose income is wholly derived from purely intrastate activity. (pl Br. in Oppn to Defs' Mot. to Dismiss at 1-2,3,4). The seem to believe that the federal taxing power is co-extensive with the federal commerce clause power and extends only to activities "among the several States." (See e.g. Am Compl. at pr. 6-7, 10; Pl. Brf). They rely on the just quoted language in the sixteenth amendment, equating it to similar language found in the commerce clause.

I address the plaintiffs argument in my memorandum and order of earlier this date on their motion to reconsider my April 18, 1997, decision dismissing their original complaint. I wrote:

With respect to the plaintiffs contentions that the sixteenth amendment applies only to income derived from interstate sources, it is a frivolous argument. The powers of Congress to tax are st out in four provisions of the Constitution. Article I, Section 2, Clause 3 provides that "[r]epresentatives and direct taxes shall be apportioned among the several States which may be included within the Union, according to their respective numbers..." Article I, Section 8, Clause 1 of the Constitution provides that "[t]he Congress shall have the power to lay and collect taxes..." Article I, Section 9, Clause 4 states that "[n]o Capitation, or other direct, tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken." Finally, the sixteenth amendment states that "[t]he Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." In their motion, the plaintiffs have focused on the "among the several States" language as demanding that the income upon which the federal tax is imposed be derived from interstate commerce. Such is not the case.

None of the provisions just cited, unlike the Commerce Clause's restriction on Congress' power to regulate interstate commerce, restrict the Congress' power to tax only income derived form interstate commerce. The language employed in the sixteenth amendment to which the plaintiffs point eliminates restrictions on Congress taxing power stemming from Article I,

Section 2, Clause 3 and Article I, Section 9, Clause 4, concerning the need for apportionment among the states. Congress may impose taxes on individuals in the states"without apportionment among the several States, and without regard to any census or enumeration" and " on income from whatever source derived." It is this last language which governs from what ever source the income tax may be assessed, and the "among the several States" language only clarifies that Congress need not apportion such tax among the states based on their number or any census or enumeration. See Peck v. Lowe, 247 U.S. 165(1918)(requirement of apportionment among the states of tax on income no longer exists); Brushaber v. Union Pacific R.R. 240 U.S.1(1916)(same); Lovell v. United States, 755 F.2d. 517(7th Cir. 1984)(holding direct taxation without apportionment is constitutional); Parker v. Commissioner of Int. Rev. 661 F.2d. 71(5th Cir. 1981(same); Broughton v. United States, 632 F.2d. 706 (8th Cir. 1980)(same)cert denied, 450 U.S. 930(1981). It is not a restrictive grant permitting the tax to be imposed only where the individual has received income from interstate commerce. Instead, it is a broad grant of power to tax income from whatever source derived, including income derived from wholly intrastate actions and property. The plaintiffs' argument to the contrary is frivolous. As such, it does not warrant reconsideration of my earlier order dismissing their complaint.

Because the plaintiffs rest their claim for violation of 26 U.S.C. § 7433, on the I.R.S. employees' violations of the

sixteenth amendment's alleged restriction permitting the collection of taxes on income derived only from interstate commerce, and make no other factual allegations in their amended complaint, I need say no more on the plaintiffs claims.

I make one final note, however. The plaintiffs have pursued this matter claiming that the federal individual income tax violates the thirteenth amendment, as well as some supposed interstate restriction found in the sixteenth amendment. With respect to the first, this is such a body of case law now built up that such a claim is frivolous. Therefore, these plaintiffs are put on notice that offering such an argument in the future may result in sanctions being imposed for frivolous and vexations litigation. They are likewise informed that claims under the sixteenth amendment, while not exactly the same as raised here, have also been rejected numerous times before by numerous different courts. Therefore, they may be subject to sanctions in the future stemming from frivolous claims brought under that amendment. Finally, with respect to their claims that they are non-resident aliens to the United States of America, this justification for their opposition to the federal income tax is meritless and has been rejected under similar circumstances by countless courts. As such, it is a wearisome contention that should no longer see the light of day. Therefore, these defendants are placed on notice by this court that should this argument be raised in the future by them, they shall face the question of imposition of sanctions.

IT IS THEREFORE ORDERED that the defendant's motion to dismiss the amended complaint, filing 87, is hereby granted. The plaintiffs' case is dismissed with prejudice.

IT IS FURTHER ORDERED that filing 86, the plaintiff Clovis D. Colley's motion to withdraw as a plaintiff in this action is hereby denied as moot.

Dated May 30, 1997.

Warren K. Urbom
United States Senior District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3143NEL

Linda Secora, et al.,

vs

United States of America, et al.,

Appeal from the District of Nebraska

JUDGEMENT

This court has reviewed the original file of the United States District Court. It is ordered by the Court that the judgement of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

Dated September 9, 1997

Order entered at the direction of the Court.

Signed by the Clerk

Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Linda Secora, et al.,	)
	)
Appellants,	)
	)
Case No. 97-3143NEL	
	)
v.	)
	)
UNITED STATES OF AMERICA, et al.,	)
	)
Appellees.	)

PETITION FOR REHEARING

The appellants, Linda Secora, et al., petitions the court for rehearing pursuant to Federal Rules of Appellate Procedures (hereinafter referred to as FRAP) Rule 35 and Rule 40 involving a question of exceptional importance to FRAP Rule 3 or "taking an appeal as of right."

QUESTION PRESENTED

1. Can the Eight Circuit Court of Appeals exercise or impose a motion or order of "judgement" pursuant to FRAP 47 and Local Rule 47A(a) upon appellants right to appeal, before appellants have filed brief in accordance to briefing schedule?

2. What part of FRAP 47 and Local Rule 47A(a) did the Circuit Court rely upon for summarily affirming District Court Judgement prior to questions being presented in opening brief by appellants?

3. What was frivolous about appellants "Notice of Appeal" docketed July 28, 1997?

4. Can Eighth Circuit Court make a FRAP 47 or Local Rule 47A(a) determination that appellants Notice of Appeal is frivolous when no appeal was due to be filed until September 16, 1997?

5. Was the September 9, 1997, "Judgement" of the Eighth Circuit Court an attempt to prevent appellants from their right to appeal?

6. Is Judgement by Eighth Circuit Court, where phrase "summarily affirmed" is inclusive within said judgement, a order that appellants' Notice of Appeal "is not within the court's jurisdiction?"

7. Is Judgement by Eighth Circuit Court, where phrase "summarily affirmed" is inclusive within said judgement, a order that appellant's Notice of Appeal "is entirely without merit?"

8. What part of the Appellant's Notice of Appeal did the Court rely upon when it summarily affirmed the District Court's Order?

9. On what date (including month and year) did the Eighth Circuit Court of Appeals amend Local Rule 47A(a) to allow for frivolous or meritless determinations based solely upon a appellants[']' Notice of Appeal?

10. On what date were such amendments to Local Rule 47A(a), which allowed for Notice of Appeals to receive adjudication by the Eighth Circuit Court without so much as an opening brief being filed, furnished to the Administrative office of the United States Courts?

BACKGROUND

The appellants' Notice of Appeal was mailed to the Appellate Court's docket on July 28, 1997, seeking review of the entire docket in case number 4:CV96-3356 from the United States District Court for the District of Nebraska. Appellants were to file their opening brief, by order of the Court in the case herein, on September 16, 1997 [FRAP 26(c)].

On September 9, 1997, this Court issued a "Judgement" wherein in it referred to the "Appeal from the United States District Court for the District of Nebraska" and where the Court "summarily affirmed" the judgement of the District Court. In the Courts September 9, 1997 order, the Court ordered in accordance with "Eighth Circuit Rule 47A(a).

Appellants procure a summary herein of Eighth Circuit Court Rule 47A(a).

> (a) **On Motion of Court.** The court on its own motion may summarily dispose of any appeal without notice....The court will dismiss the appeal if it is not within the court's jurisdiction or is frivolous and entirely without merit. The court may affirm or reverse when the question presented do not require further consideration.

The appellants applied "..." within the courts rule where reference is made to "in forma pauperis" on grounds such language of the rule is not applicable to the appellants herein.

ARGUMENT

The appellants have received unfair treatment by the Eighth Circuit Court of Appeals whereby the Court exercised it's discretionary functions applicable with issues contained in "promulgated" Local Rule 47A(a). Local Rule 47A(a) applies to the disposition of any appeal without notice. A fair construction involving the spirit of Local Rule 47A(a) is that:

a. the Court may "dismiss" the appeal if the appeal is not within the court's jurisdiction;

b. the Court may dismiss the appeal if the appeal is determined by the Court to be frivolous;

c. the Court may dismiss the appeal if the appeal is without merit;

d. the Court may affirm or reverse when the questions presented do not require further consideration.

SUPPORT FOR REHEARING

With regard to whether this Court has jurisdiction (number 1 above) to determine the merits of appellants request (right under Rule 3) for review of the District Court's Order, the Appellate Court obviously has jurisdiction based upon the prima facie, preponderance and beyond a reasonable doubt "evidence" of its Judgement entered September 9, 1997. If the Appellate Court decided it did not have Jurisdiction over the Notice of Appeal, then the Appellate Court would dismiss "for want of Jurisdiction." No Judgement upon the merits could be invoked.

With regard to whether the Court determined that appellants' Notice of Appeal was "frivolous" (number 2 above) its appears that the Eighth Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Notice of Appeal, was determined "frivolous," appellants' request the Eighth Circuit Court reconsider on grounds that the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "frivolousness."

With regard to whether the Court determined that appellants' Notice of Appeal is "without merit" (number 3 above) its appears that the Eighth Circuit Court has imposed Rule 47 to oppose FRAP Rule 3. If the determination of the Appellate Court, with regard to a Notice of Appeal, was determined "without merit," appellants' request the Eighth Circuit Court reconsider determination on grounds that the Appellate record does not contain any documents filed with the Clerk which could be relied upon to support a determination of "without merit." FRAP Rule 3 allows for the appellants to take the appeal as of right. The actions of the Appellate Court appear to be an attempt to prevent appellants' opening brief from being filed. The Appellate Court could not have determined that issues raised or questions presented were without merit since no such issues or questions have yet been presented. Appellants remained with 8 (eight) days to file such issues or questions when the Eighth Circuit Court of Appeals arbitrarily entered it's "summarily affirmation of the District Court's Order[s] and Judgement."

With regard to the Court affirming or reversing (number 4 above) when the questions presented do not require further consideration, the appellants undeniably argue that the Appellate Court did "summarily affirm" the District Court's Order but upon what questions presented is alarming. Appellants have not filed a Court Ordered opening brief (opening brief means appellants survived jurisdictional test of Clerk) because 8 days prior to such being due, the Appellate Court entered the "Judgement" herein now being requested to be reversed. Appellants have not formally presented, as of right, or been allowed to present any issues or questions for review and thus the Judgement of summarily affirmed should be "REVERSED".

CONCLUSION

The appellants, Linda Secora, et al., pursuant to FRAP 35, 40 and 47 and Local Rule 35, 40, and 47, request the Eighth Circuit Court of Appeals rehear the appellants' appeal by issuing appropriate dates for appellants' opening brief and the rest of the briefing schedule, reverse it's Judgement of September 9, 1997, and issue a mandate that FRAP 47 and Local Rule 47A(a) can not be imposed under usual and normal conditions, unless and until issues or questions are presented to which a determination of frivolous or meritless can be reasonably made by the Court, and or unless the Court makes a predetermination it lacks jurisdiction on the within matter wherein the issues of frivolous or meritless are a moot point.

Respectfully Submitted

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3143NEL

Rodney Joseph Cox, et al.,

v.

United States of America, et al.,

Order denying Petition for Rehearing and Suggestion for Rehearing En Banc

The suggestion for rehearing en banc is denied. The Petition for rehearing by the panel is also denied.

November 14, 1997

Order entered at the direction of the Court

Signed by the Clerk

Michael E. Gans

IN THE SUPREME COURT OF THE UNITED STATES

February 17, 1998

Mr. Rodney Joseph Cox, et al.,

Re: Application A-608

Dear Mr. Cox, the application for an extension of time within which to file a petition for a Writ of Certiorari in the above entitled case has been presented to Justice Thomas, who on February 17, 1998, extended the time to and including March 14, 1998.

Signed by the Clerk

Jeffrey D. Atkins